

STATE OF MICHIGAN
COURT OF APPEALS

GAIL A. LIEBENGOOD,

Plaintiff-Appellant,

v

O.D.S. FUELS, INC., d/b/a “THE STATE” and
COREY E. FURISTER,

Defendants-Appellees.

UNPUBLISHED

January 28, 2003

No. 235298

Genesee Circuit Court

LC No. 00-068119-NO

Before: Bandstra, P.J., and Zahra and Meter, JJ.

PER CURIAM.

This premises liability action stems from injuries received by plaintiff during a bar room fight in which she was not directly involved. Plaintiff appeals as of right from the trial court’s order granting summary disposition in favor of defendant O.D.S. Fuels, Inc. (ODS), the proprietor of the bar, under MCR 2.116(C)(10). We affirm.

This Court’s review of a decision regarding a motion for summary disposition is de novo. *Spiek v Dep’t of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion under MCR 2.116(C)(10) tests the factual support for a claim. *Id.* When deciding a motion for summary disposition under MCR 2.116(C)(10), a court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence submitted in the light most favorable to the nonmoving party. *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999). If the evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

In *MacDonald v PKT, Inc*, 464 Mich 322; 628 NW2d 33 (2001), the Supreme Court clarified the duties of a merchant as they relate to criminal acts of others. Specifically, the Court reaffirmed that “generally merchants ‘have a duty to use reasonable care to protect their identifiable invitees from the foreseeable criminal acts of third parties.’” *Id.* at 338, quoting *Mason v Royal Dequindre, Inc*, 455 Mich 391, 405; 566 NW2d 199 (1997). However, this duty is only triggered by “specific acts occurring on the premises that pose a risk of imminent and foreseeable harm to an identifiable invitee.” *MacDonald, supra*. Thus, the initial question is whether plaintiff was readily identifiable as foreseeably endangered once the fight began. *Id.* at 339.

Considering that one-third of the crowded bar became involved in the fight, there was sufficient evidence from which a factfinder could conclude that a reasonable person would have recognized a risk of imminent harm to plaintiff. Thus, the trial court incorrectly determined that ODS did not owe plaintiff a duty.

However, this Court will not reverse a trial court's order if it reached the right result for the wrong reason. *Allen v Comprehensive Health Services, Inc*, 222 Mich App 426, 434, n 7; 564 NW2d 914 (1997). Even if plaintiff was foreseeably endangered once the fight began, this finding merely prompts the duty to respond, which is limited to reasonably expediting the involvement of the police. *MacDonald, supra*.

On this point, plaintiff argues that the melee lasted twenty minutes, but that fact does not establish when the police were called. There was no evidence produced to suggest that ODS's bartender could have called the police prior to plaintiff being hit with the glass. The bartender testified that he had no reason to know of any disturbance until plaintiff was injured. Similarly, plaintiff's testimony was that she was sitting at the bar when she heard commotion, turned around, and was struck by the glass. It is uncontested that the police and an ambulance were called soon after plaintiff was struck by the glass. No evidence suggests that the bartender refused, or unreasonably waited, to expedite involvement of the police.

Plaintiff failed to produce sufficient evidence to establish a genuine issue with respect to the timeliness of defendant's response to the bar fight. Accordingly, defendant was entitled to judgment as a matter of law. *Maiden, supra*.

We affirm.

/s/ Richard A. Bandstra
/s/ Brian K. Zahra
/s/ Patrick M. Meter